

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No.: 14-16

BALTIC AUTO SHIPPING, INC.,

Complainant,

— vs. —

**MICHAEL HITRINOV
a/k/a MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC.,**

Respondents.

**COMPLAINANT’S RESPONSE TO RESPONDENTS’ UNAUTHORIZED SUR-REPLY,
MADE WITHOUT LEAVE OF THE PRESIDING OFFICER OR THE COMMISSION,
IN ALLEGED FURTHER OPPOSITION TO COMPLAINANT’S MOTION TO
WITHDRAW APPEAL AND DISCONTINUE ACTION**

Complainant, Baltic Auto Shipping, Inc. ("Baltic"), by and through its attorney, Marcus A. Nussbaum, Esq., hereby responds to respondents’ unauthorized sur-reply to complainant’s motion for an Order, pursuant to Rule 72 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.72: (1) discontinuing the instant matter with prejudice, and without costs, attorneys' fees or disbursements to either party as against each other; and (2) discontinuing the appeal/exceptions filed by Complainant herein, with prejudice.

RELIEF REQUESTED

Complainant’s instant motion seeks withdrawal of the appeal/exceptions filed by Complainant herein, and additionally seeks an Order discontinuing the instant matter with prejudice, and without costs, attorneys' fees or disbursements to either party as against each other.

RECENT PROCEDURAL HISTORY

On September 16, 2016 respondents herein by their counsel Gerard S. Doyle, Esq. (“Mr. Doyle”) filed with the Commission a “sur-reply” to complainant’s pending Motion to Withdraw

Appeal and Discontinue Action presently pending before the Commission. Significantly, *at no time* prior to filing said sur-reply did Mr. Doyle *either* request and obtain leave from the Presiding Officer or the Commission to file said sur-reply, *or* make any attempt to ‘meet and confer’ with complainants’ counsel prior to filing said unauthorized sur-reply.

ARGUMENT

As set forth above, respondents, by their counsel Mr. Doyle, following the pattern of respondents’ counsel in other matters, Jon Werner, who despite refusing to appear in this matter has persistently sought to interfere with the orderly disposition of same, have improperly sought to take additional “bites at the apple” in the form of further unauthorized “argument” made within respondents’ sur-reply to which complainant now respectfully responds.

It is further respectfully submitted that Mr. Doyle, having abjectly failed to dispute or deny the prior stipulations and agreements made by respondent, Hitrinov in a separate matter, both on the record and as memorialized in a “confidential” Settlement Agreement submitted for the Presiding Officer’s and the Commission’s *in camera* review, can only now be construed to have *admitted and conceded* Hitrinov’s representations which *specifically waived* any and all rights to seek costs and/or attorneys’ fees arising out of the litigation of the case at bar, or the dismissal and discontinuance of same. Neither is Mr. Doyle’s representations of alleged ‘unfair surprise’ regarding the existence of his clients’ representations ‘on the record’ and by his attorney Mr. Werner’s drafting of the said Settlement Agreement, anything but *completely and wholly disingenuous* in light of his clients’ participation in, and undeniable knowledge of, the existence of said representations and the said Settlement Agreement.

Equally disingenuous, is Mr. Doyle’s ‘torturing’ of complainant’s requested relief by distorting same as an alleged request for the Presiding Officer and the Commission to “enforce” representations made by respondent, Hitrinov and dictated by his attorney, Werner. Indeed, such representations were “enforced” by the Honorable Judge Claire Cecchi, and the Honorable

Magistrate Judge Mark Falk as the jurists presiding over the matter giving rise to respondent Hitrinov's stipulations and agreements which he now, by his counsel Mr. Doyle, seeks to renege upon and otherwise belie.

Neither is it of merit or moment that complainant's counsel has (correctly) declined to violate the confidentiality of said Settlement Agreement by providing Mr. Doyle with an unredacted copy of same, which is readily available from his own client, thus rendering Mr. Doyle's decial to be not only without merit, but bordering on fraudulent.

Mr. Doyle has further disingenuously attempted to conflate his clients' prior stipulation and agreement to dismiss and discontinue the instant action without costs, and without attorneys' fees to either party with the underlying merits of the case. *Clearly, there exists no nexus whatsoever* between said merits (which sound in violations of the Shipping Act) and respondent Hitrinov's separate binding agreement to waive all costs and attorneys' fees arising out of the litigation of this matter, or the dismissal and discontinuance of same.

With regard to Mr. Doyle's 'half-hearted' and 'throwaway' attempt to challenge complainant's having followed proper procedure regarding the redacted and unredacted versions of the subject Settlement Agreement, the latter is a *completely false argument* in that as aforestated, respondent, Hitrinov is *already* in possession of an unredacted copy of said Settlement Agreement; and in that the issue of an unredacted versus a redacted version of the Settlement Agreement *in no way* relates to respondent Hitrinov's undeniable waiver of the right to seek costs and/or attorneys' fees in this matter, or Mr. Doyle's conspicuous failure to dispute or refute same.

With respect to Mr. Doyle's ridiculous "argument" (if it can fairly be characterized as such) that complainant's having provided the Presiding Officer and Commission with a copy of the subject Settlement Agreement constitutes an alleged violation of respondent Hitrinov's "due process" rights, complainant is indeed amused by the spectacle of Hitrinov protesting that holding him to his "word" is a violation of his "rights", the patent absurdity, utter disingenuousness, and

total incongruity of which is self-evident.

With regard to Mr. Doyle's incomprehensible gibberish that complainant's instant motion should be denied "...as Respondents have not consented..." to said relief, complainant confesses to being at a loss at how to respond to such unlawyerly, non-legal, and convoluted garbage, other than to note the utter and sheer desperation of Mr. Doyle, who is clearly prepared to say anything, no matter how devoid of legal basis or analysis to allow his client, Hitrinov to "have his cake and eat it too", by on the one hand stipulating and agreeing to dismissal and discontinuance of the instant case without costs or attorneys' fees to either party and insisting the inclusion of said waiver into the Settlement Agreement drafted by his attorney Werner, and in the veritable same breath, disavowing same as it suits his ill-gotten purposes in an epic demonstration of "situational ethics".

CONCLUSION

While complainant notes Mr. Doyle having shamelessly attempted to "ape" complainant's counsel's writing style and method of analysis, imitation (even a poor one) being the sincerest form of flattery, it is respectfully submitted that Mr. Doyle's exercise is one of "form over substance" which *fails abysmally* to justify his duplicitous and two-faced client, Hitrinov having explicitly waived his right to seek costs and/or attorneys' fees in the case at bar as a means of extracting a Settlement Agreement in an unrelated matter, only to now blatantly attempt to play the Presiding Officer and Commission for a fool by underhandedly attempting to disavow and challenge the veracity of Hitrinov's own prior "word", of which Hitrinov by his counsel, Doyle argues that an attempt to hold Hitrinov to said "word" is a violation of his right to due process.

It is therefore respectfully submitted that the Presiding Officer should not allow the Office of the Commission to be used and abused in such a deceitful and despicable manner as that plied by respondent, Hitrinov, his counsel, Doyle, and his minion, Werner in their collective faithless and feckless attempt to evade and avoid terms and conditions extracted and agreed to by Hitrinov, and drafted by his counsel, Werner at Hitrinov's insistence, which now mandate dismissal and

discontinuance of the case at bar, without costs and/or attorneys' fees to either party.

WHEREFORE, based upon the foregoing together with arguments set forth in complainant's original motion and reply thereto, it is respectfully submitted that the Presiding Officer and the Commission should now grant complainant's motion in its entirety; dismiss this case with prejudice and without costs and attorneys' fees to either party; grant complainant leave to withdraw the pending appeal and discontinue this matter without costs or attorneys' fees to either party, together with such other and further relief as may be just and proper under the circumstances.

Dated: September 20, 2016
Brooklyn, New York

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Marcus A. Nussbaum", is written over a horizontal line.

Marcus A. Nussbaum, Esq.
P.O. Box 245599
Brooklyn, NY 11224
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Attorney for Complainant

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the within **COMPLAINANT'S RESPONSE TO RESPONDENTS' UNAUTHORIZED SUR-REPLY, MADE WITHOUT LEAVE OF THE PRESIDING OFFICER OR THE COMMISSION, IN ALLEGED FURTHER OPPOSITION TO COMPLAINANT'S MOTION TO WITHDRAW APPEAL AND DISCONTINUE ACTION** upon Respondents' Counsel, The Law Office of Doyle & Doyle, with the address of 636 Morris Turnpike, Short Hills, NJ 07078 by first class mail, postage prepaid, and by email (gdoyle@doyelaw.net).

A handwritten signature in cursive script, appearing to read "Marcus A. Nussbaum", written over a horizontal line.

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Dated: September 20, 2016
Brooklyn, New York